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## THE SALIENT FEATURES OF COPYRIGHT LAW IN SRI LANKA – PART V



**Sanuji Munasinghe**

Attorney at Law  
AUDIRI VOX  
Colombo, Sri Lanka

In our final article on the copyright laws of Sri Lanka, we are looking at discussing about related rights, protection of Folklore, management of rights and retrospective rights.

### Related rights

In the simplest terms, related rights refer to the protections granted to entities involved in the dissemination or production of creative works, such as performers, producers of sound recordings, and broadcasters. These rights complement copyright but focus on protecting performances, recordings, and broadcasts rather than the underlying creative work. Related rights ensure fair remuneration and control over the use of these contributions.

Related rights can be broken down into three parts:

1. Rights of Performers
2. Rights of the Producers and Sound Recording
3. Rights of Broadcasting Organizations

The above categories may have given you an idea of what protection related rights actually offer. These rights, which are also known as **Neighboring Rights**, are formulated to protect parties who engage in

making copyright material available to the general public or engage in making production of works which either creativity or makes use of creative talent.

Let us explore briefly the above noted categories and what special concerns are in existence in each of those categories.

### Rights of Performers

What is meant by a Performer is, someone who is either a singer, musician or someone engaging in singing or performing any literary artistic or what we will later discuss in this article- the expression of folklore.

As per the provisions of the Intellectual Property Act, under **Section 17**, a performer is granted an exclusive right to conduct the following:

1. To either engage in broadcasting or communicate by any other means to the public, his performance or a substantial part of his performance.
2. The reproduction of a fixation of his performance or a substantial part of his performance.
3. Fixation of an unfixed performance or a substantial part of his performance.

The Act does not restrict performers from entering into contracts which contain terms and conditions which are more favorable to them with regard to their performance.

These rights which are afforded to the performer shall be in existence until the end of the 50th calendar year following the date of their performance.

### Rights of the Producers and Sound Recording

As per the provisions of **Section 5** of the Intellectual Property Act, the producer of a sound recording has been defined “*the physical person or legal entity that undertakes the initiative and responsibility for the making of the sound recording*”.

A producer of a sound recording is entitled under the Act to carry out the following:



1. The sound recording or a substantial part of such sound recording can be reproduced, either directly or indirectly.
2. Copies of a sound recording or a substantial part can be imported.
3. The sound recording or a substantial part of sound recordings can be adapted or transformed into any other format.
4. Regardless of the ownership of a sound recording or a substantial part can be rented out. It must be noted that as per the Act, rental refers to the temporary transfer of possession of the original or a copy of a sound recording for commercial purposes.
5. Original or copies of the sound recording or substantial part of it being sold or offering for sale to the public.

These rights shall be in existence until the end of the 50th calendar year following the date of their publication or if the sound recording has been published then from the date of fixation to the end of the 50th year following such fixation.

### Rights of Broadcasting Organizations

According to **Section 20** of the Act, broadcasting has been defined as *“the communication of work, a performance or a sound recording to the public by wireless transmission including transmission by satellites”*

The protected rights of broadcasting organization are as follows:

1. Rebroadcasting of content that has been broadcasted or a substantial part
2. Making any communication to the public regarding any of its broadcast or substantial part
3. Fixation of a broadcast or substantial part
4. Reproduction of a broadcast or substantial part

Same as the above rights for performers and producers of sound recordings, the rights so granted shall be valid for a period from the time the broadcast occurs until the end of the 50th calendar year after the year of the broadcast

### Limitation of related rights

As per the Act, the rights enumerated above, which are granted to performers, producers of sound recordings and broadcasting organizations, do not cover:

- 1) Use by a person for his personal purposes
- 2) For the purpose of providing current information by using short experts
- 3) Usage for teaching activities conducted face to face
- 4) Where provisions are available under the law for work to be used without the requirement of obtaining authorization from the owner of a copy right

### Protection of Folklore

While the Act has its specific definition of what Folklore means, in a simpler context Folklore refers to the traditional beliefs, customs, stories, songs, rituals, practices, and knowledge shared within a culture or community, typically passed down orally or through practice across generations. It represents the cultural expression of a group of people and is often rooted in their history, environment, and shared experiences.

Provisions under **Section 24** protects Folklore from being:

- 1) Reproduced
- 2) Communication to the public by way of performance broadcasting and distribution either by cable or any other means
- 3) Adaptation, translation and other means of transformation of the original version.

In other words, folklore can not be claimed by anyone for their own exclusive use once they have incorporated that into their own songs or any artistic work.

### Management of Rights

Management of rights which are protected under copyright law takes two forms:

1. Individual Management
2. Collective Management

Individual Management to the process where the creator or owner of a copyrighted work personally oversees the rights and uses of their work, rather than relying on a collective management organization (CMO) or an agent to do so. This approach gives the copyright holder full control over how their work is distributed, licensed, or monetized.

Collective Management refers to the system where copyright holders authorize specialized organizations, known as Collective Management Organizations (CMOs) or Collecting Societies, to manage their rights on their behalf. These organizations oversee the licensing, collection, and distribution of royalties for the use of copyrighted works across a wide range of users and platforms.

### Retrospective Effect

Provisions of the Act ensures that rights granted under the repealed Code (Code of Intellectual Property Act No 52 of 1979, before the current law took effect) remain valid and enforceable, except for imposing punishments, as long as the original term of protection has not expired under the old Code or the laws of the work's country of origin, provided the work is protected under an international treaty to which Sri Lanka is a party.

## TRADEMARK PRELIMINARY SEARCH – STRATEGY FOR TRADEMARK REGISTRATION



By Krutarth Sontakke

### Introduction

This article focuses on the most undervalued yet crucial part of the trademark registration process. Various business owners overlook this step of trademark preliminary search during the process and take risk of refusal of trademark application and opposition. As a trademark attorney, we suggest each of our clients to complete this step, some people take suggestions seriously and avoid jumping into the pool of risks and their trademark gets successfully registered.

Trademark Preliminary search or Clearance search plays a vital role while creating and building a brand. It starts before the announcement of the brand name; this ensures the use of the brand shall not be disputed on the basis of its name. It further ensures the smooth prosecution and registration process of a trademark.

### Brand creation and importance of search

In the ever-growing competition and evolving marketplace, it has become difficult for businesses to create a place for themselves. Branding is the tool which helps a business to differentiate itself from its competitors and create goodwill in the marketplace. A brand can be defined as a name, symbol or an imagery used by businesses to distinguish their products and services from other businesses. The brand name is an intangible asset of a business which attaches value to the products and services of it. While deciding the brand name/logo, one must go through the process of preliminary search of that brand name/logo to avoid unwanted compliance and risk of litigation. This applies not only to trademarks but also to the domain name. Most business enthusiasts often check

trademark or brand name availability but forget to check domain names. Hence it is necessary to conduct thorough search on the proposed brand name and its associated elements which eventually are going to affect its own brand identity.

Let's understand the best-case scenario to conduct the clearance search. Assume that "Provitics" is a proposed brand name with a creative logo. The mark/business owner must first search for the mark on their own and hire an expert/specialist and discuss the background, story, or idea behind choosing the mark along with the specifics of the goods and services and potential future expansion of the company under the proposed mark. This gives the expert an overall understanding of the mark and its existing offerings as well as potential future offerings. The lawyer will therefore conduct a general internet search, followed by searches for domain names, trademarks, government registrations and international domains. Last but not the least, the expert will utilize their own resources to determine whether the proposed mark or any mark that is similar to it is conducting business in the market or online with the same services. This is not the end of it. The lawyers and specialists evaluate the results appropriately, provide search reports, and offer comprehensive reviews of any legal and compliance issues. It allows the mark owner to make an informed choice about whether or not to adopt the suggested mark. Many a times, the brand owner may have a thought of a brand that is phonetically similar to an existing brand, if he goes ahead with such a brand, he may face problems later. Thus the legal team does work beyond the call of just searching for a brand, it will also advise you on such pitfalls that can happen due to similar looking, similar sounding brand names and brand marks.

### Importance of search in Trademark registration process

A brand can be identified primarily on Name and its Logo. The registration of trademarks has significant power and rights within it. The trademark protection is perpetual, and it is also important to make a note that the trademark has to be renewed every 10 years otherwise it lapses automatically. The trademark preliminary search is the first stage of the prosecution. This stage determines the existence of objectionable marks already on the trademark register as well as marks pending for registration.





For conducting trademark preliminary search, it is important to identify the class of the trademark with respect to its goods and services. There is an international system used to standardize framework for categorizing products and services worldwide. There are a total of 45 classes of trademarks out of which class 1-34 are for the Goods-based trademarks and class 35 to 45 are for service-based trademarks. It ensures that your trademark is protected under specific Goods or services. It also avoids conflicts with existing trademarks and ensures smooth compliance with international trade policies and quality standards.

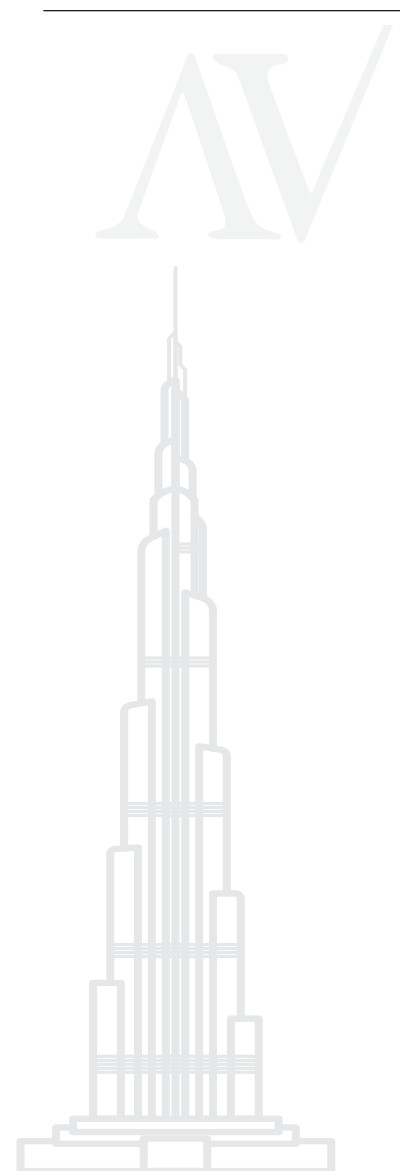
Upon identification of appropriate classes, one can move ahead for preliminary search which is available at official website of IP India. The search for wordmark is conducted to determine deceptively similar, phonetically similar to the prior applied/registered trademarks. The WIPO established the Vienna Classification which originated from the Vienna Agreement (1973), to simplify the worldwide trademark search for unregistered/proposed logo trademarks. It is a standardized system that reduces the redundancy of trademark applications and provides codes for graphic/figurative elements under Vienna Codification which makes the logo search easy.



The traditional website of conducting clearance search has very limited scope. It was known as public search (can be accessible at <https://tmrsearch.ipindia.gov.in/tmrpublicsearch/>). Recently, On September 18, 2024, the Hon'ble Union Minister of Commerce and Industry introduced Trademark Search Technology powered by artificial intelligence (AI) and machine learning (ML) can be accessible at [https://tmsearch.ipindia.gov.in/ords/r/tisa/trademark\\_search/dpiit-public-search](https://tmsearch.ipindia.gov.in/ords/r/tisa/trademark_search/dpiit-public-search). The key feature of Trademark Search Technology involves precise trademark identification with the help of advanced AI and ML, streamlining search processes for Indian and international business, and enhance protection capabilities for trademarks in a short time frame.

## Conclusion

A trademark search is a vital stage for individuals and businesses looking to secure their brand identity and ensure legal compliance. It involves thorough research to identify existing trademarks that may conflict with the one you intend to register. This process not only helps prevent costly legal disputes and brand confusion but also serves as the foundation for building a strong and distinctive brand. Whether done independently or with the help of legal experts, a trademark search is a vital tool in the competitive business world, particularly when contemplating global expansion. Investing in this process allows you to safeguard your brand, gain a competitive advantage, and lay the groundwork for a successful and distinct brand identity.



## AUDIRI VOX ATTORNEYS ATTENDED APAA ANNUAL MEETING 2024 IN MANILA, PHILIPPINES

The Team of **Audiri Vox** had an honor of participating in the 76th Council Meeting of the **Asian Patent Attorneys Association (APAA 2024)** held in the dynamic city of Manila, Philippines from November 18-21, 2024. Our Global Head of Patents Practice, Adv. Divyendu Verma, has represented the firm in this esteemed gathering which brought together intellectual property professionals from across the Asia-Pacific region and beyond, providing an invaluable platform for exchanging insights, fostering collaborations, and building stronger networks.



As a member of copyright standing committee, Mr. Divyendu has provided valuable insights about the recent copyright matters decided by the Indian Courts. The copyright committee members had significance discussion on the topic **“Generative AI and Copyright Infringement”** where the committee members have engaging dialogues on Generative AI Inputs in Training Data and Copyright Infringement; AI-Generated Outputs and Copyright Concerns. The Committee has explored several questions, such as the circumstances under which training AI models using datasets infringes copyright, whether utilizing copyrighted works from a single owner for machine learning (ML) constitutes infringement, and how the inclusion of copyrighted works from multiple owners affects the legality of AI training processes.



On exploring the charms of Old Manila, the team had an elegant evening of fine dining, introducing the Indian cuisines to our small group of foreign friends and colleagues.



Connecting with a diverse group of delegates, including international observers, and reconnecting with friends and foreign affiliates made the experience truly enriching and rewarding. The event was a success, featuring engaging academic sessions, interactive workshops, and insightful roundtable discussions.





## SHAPING GLOBAL DESIGN LAW: ADV. DIVYENDU VERMA AT DLT NEGOTIATIONS IN RIYADH

Advocate Divyendu Verma, Global Head of the Patents Department at Audiri Vox, played a pivotal role in the **Diplomatic Conference on the Design Law Treaty (DLT) 2024** held in Riyadh, Saudi Arabia. Representing INTA alongside other members of the **International Trademark Association (INTA)**, Mr. Verma brought significant expertise to discussions that helped the negotiations and discussion and finally WIPO has adopted the Design Law Treaty (DLT) on November 22, 2024. This is the second WIPO treaty to be adopted this year, highlighting the vitality of multilateralism in intellectual property (IP) law and the ability to achieve consensus despite diverse perspectives on IP.



The DLT sets a new global standard for design law where design-intensive industries play a crucial role in the economy. It will enhance the protection of design rights, benefiting both individual designers and small and medium-sized enterprises (SMEs).



The primary goal of the DLT is to create a more accessible and efficient system for design protection worldwide. The expected outcomes include reduced costs and complexity, faster processing times, and greater predictability and legal certainty for designers. This international initiative sends a positive signal, highlighting the global importance of robust design protection, particularly for individual

creators and SMEs.

Key discussions during the conference included debates on Article 3(1)(a)(ix), focusing on the disclosure of the origin of traditional cultural expressions, traditional knowledge, or biological/genetic resources in industrial designs, as well as Article 6, which addresses the grace period for prefiling disclosures. These topics underscored the complex interplay between protecting intellectual property and respecting indigenous and cultural heritage.



As a member of INTA's Design Law Committee, Mr. Verma contributed to formulating and advocating INTA's official positions on critical treaty provisions. These positions include:

- Supporting a minimum 12-month unconditional grace period (Article 6).
- Advocating for a 15-year minimum term of protection for industrial designs (Article 9bis).
- Promoting mandatory electronic systems for filing, search, and priority claims (Articles 9ter, 14bis, and 9qater).





## IP UPDATES

### YEMEN: YEMEN-SANAA RELAXED ITS POLICY TOWARDS US AND SWEDISH APPLICANTS



On November 11, 2024, The Ministry of Economy and Industry and Investment Trade in Sana'a has issued Ministerial Decision No. 56 of 2024, easing previous restrictions on Swedish and

American companies. Initially, this decision only applies to the renewal of US and Swedish trademarks, but it's expected that these companies will soon have access to the full range of services offered by the Ministry, on par with other applicants. However, this is contingent upon their activities not infringing on the rights of Yemeni merchants.

Prior to this development, the Ministry of Industry had declared all trademark applications from American applicants inadmissible as of October 31, 2023, and canceled existing trademarks registered under American applicants in Yemen. In light of these changes, the TM registrar recommends that US trademark registrations that lapsed during previous sanction periods be renewed promptly to ensure timely processing under the revised framework

### IRAN: IRAN ENACTS NEW INTELLECTUAL PROPERTY LAW AND FEE INCREASE



As of October 22nd, 2024, a new Iranian IP Law along has come into effect which has introduced newly increased official fees for several Trademark, Patents and industrial

design services.

Iran's new intellectual property law significantly increases official fees, now payable in local currency (Iranian rials) through online channels. Despite increased fees, foreign applicants' overall costs decrease due to the currency shift. The law also expands protection to utility models, trade secrets, and certification marks, with procedural adjustments pending approval of the executive by-law.

### SAUDI ARABIA: SAUDI ARABIA: SAIP TO BECOME INTERNATIONAL SEARCHING AUTHORITY (ISA) AND INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY (IPEA)



In October 2024, The World Intellectual Property Organization (WIPO) has announced that the Saudi Authority for Intellectual Property (SAIP) will become an International Searching Authority (ISA) and International Preliminary Examining Authority (IPEA) under the Patent Cooperation Treaty (PCT), starting December 15, 2024. This new role, assigned by the PCT Assembly in July 2023, is a significant milestone for SAIP and the Kingdom's intellectual property landscape. The Saudi Authority for Intellectual Property's (SAIP) new role as an International Searching Authority (ISA) brings several benefits, as a Saudi Arabian authority, SAIP is well-positioned to provide Arabic-language patent search and examination services. Applicants from Arabic-speaking countries can now designate SAIP as their ISA for PCT applications. SAIP's ISA role will strengthen the regional intellectual property ecosystem, enhancing innovation protection. This, in turn, is expected to drive innovation and economic growth in Arabic-speaking countries.

### IRAQ: IRAQ-BAGHDAD ADOPTS THE 11TH EDITION OF THE NICE CLASSIFICATION



The Trademark Office in Iraq-Baghdad has adopted the 11th edition of the Nice Classification. Iraq has taken a major step forward by adopting international standards, replacing the outdated 7th edition classification system with a more modern approach. The Trademark Office has not explicitly specified the exact date for the implementation of the 11th edition, its still pending.

A significant outcome of this change is the reclassification of services initially registered under class 42. However, the implications for existing registrations are currently unclear. It remains to be seen whether these registrations will be automatically reassigned to classes 43-45, or if trademark owners will need to take additional steps during post-registration procedures or at a later stage. Additionally, the current alphabetical listing of sub-classes may be discontinued, but official confirmation is pending.

### NEW IMPORT REQUIREMENTS FOR SPECIFIC PRODUCTS IN IRAQ

The Ministerial Economic Council has announced

Decree No. 5 of 2024, outlining new regulations for foreign companies manufacturing certain electrical products and cigarettes intended for import into Iraq. According to the decree, the following products cannot be imported into Iraq unless the supplying companies secure an Iraqi Quality Certificate:

- Household electric storage water heaters
- Household electric room heaters
- Household electric cooling devices
- Household air conditioners
- Electric ovens
- Cigarettes

To obtain the Iraqi Quality Certificate, foreign companies must first register a branch of their company within Iraq.

## PATENTS CASES

### COMVIVA TECHNOLOGIES LIMITED (Appellant) vs ASSISTANT CONTROLLER OF PATENTS & DESIGN (Respondents)

CASE NO. C.A.(COMM.IPD-PAT) 492/2022

DECIDED ON: November 12, 2024



The current appeal has been filed by the appellant against the respondent for refusing the appellant's patent application under section 3(k) of the Patent Act. The appellant submitted that the respondent failed to appreciate the 'technical effect' or 'technical contribution' of the computer-related invention even though such inventions are patentable, also the proposed invention is the technical process to secure authentication. The respondent counter argued that the appellant's invention falls under 'business method' which is not patentable under section 3(k) of the Patent Act and also the authentication process in the invention is considered as financial activity which is also not patentable as per clause 4.5.2 of the Guidelines for Examination of Computer Related Inventions, 2016.

The Hon'ble Delhi High Court observed that the appellant's patent application was wrongfully refused by the respondent under section 3(k) of the Patent Act claiming to fall into category of 'business method' and 'computer programme per se'. The Hon'ble Court stated

that the invention provides a technical solution to a technical problem, specifically enhancing the security of electronic payment transactions and thus setting aside the impugned order and by proceeding the appellant's patent application for grant.

### IDEMIA IDENTITY & SECURITY FRANCE (Appellant) Vs 1. THE CONTROLLER GENERAL OF PATENTS AND 2. ASSISTANT CONTROLLER OF PATENTS & DESIGNS (Respondents)

CASE NO. (T) CMA (PT) NO.198 of 2023 and

(T) CMP (PT) NO.21 OF 2023

DECIDED ON: November 12, 2024



The present appeal has been filed by the appellant against the order passed by the respondent refusing the grant the appellant's patent application under section 3(k) of the Patent Act. The appellant submitted that the said invention involves technical contribution and therefore is patentable. The respondent counter argued that the appellant's invention has adopted 'mathematical formula' and 'business method' which cannot be patentable as per section 3(k) of the Patent Act.

The Hon'ble Madras High Court observed that the respondents did not consider the contentions presented by the appellant regarding the technical contributions of the appellant's invention and its practical application and the respondents also failed to consider that the invention is not based on a set of rules and not an algorithm and the Court further observed that the order is a non-speaking order. The Hon'ble Court concluded by remanding the matter back for fresh consideration by considering the observation that has been set out in this judgement.

### REGENERON PHARMACEUTICALS, INC (Appellant) VS CONTROLLER OF PATENTS AND DESIGNS (Respondents)

CASE NO. (T)CMA(PT) NO.191 of 2023

DECIDED ON: October 22, 2024

The applicant has filed an appeal against the respondent challenging the rejection of the appellant's patent application under section 59 and section 3(b) of the Patent Act. The appellant argued that the patent application specifying genetic modification is for the benefit for mankind, therefore it cannot be rejected under

section 3(b). The appellant also submitted that the amendments of claims were based on the specification and the substances that have already been disclosed. The respondent argued that no material was submitted pertaining benefit to mankind by genetic modulation, also the amendments made by the appellant falls within the mischief of section 59.

The Hon'ble Madras High Court rejected the respondent's objection under section 59 to reject the appellant's claim as the respondent had only considered original claim and the amended claim not including the complete specification. Further the Hon'ble Court rejected the respondent's reasoning on questioning benefit to mankind as this reasoning is against the respondent's own statement of facts. The Hon'ble Court concluded by directing the respondent to reconsider the appellant's patent application and to provide a reasonable opportunity to the appellant.

## COPYRIGHT CASES

**ANI MEDIA PVT LTD (Plaintiff) vs OPEN AI INC & ANR (Defendants)**

CASE NO. - CS(COMM) 1028/2024 with I.A. 45300/2024, I.A. 45301/2024, I.A. 45302/2024, I.A. 45303/2024 and I.A. 45304/2024

DECIDED ON – November 19, 2024

Plaintiff, a prominent news agency, filed a suit against defendants, alleging infringement of copyright in its content. The plaintiff contended that defendants AI model, ChatGPT, had stored and utilized plaintiff copyrighted works without authorization for training purposes and for generating user responses. Plaintiff argued that defendants' use of its content for training and response generation constituted copyright infringement. It sought an injunction to prevent defendants from accessing or using their work and demanded a halt to such practices. Defendants argued that they had blocklisted Plaintiff domain (www.aninews.in) in October 2024, ensuring that the domain would be excluded from future training. Defendants also raised the question of territorial jurisdiction, given its servers are located in the USA. The Hon'ble Delhi High Court identified novel legal issues, including:

- Whether storing and using ANI's copyrighted data for training ChatGPT infringes copyright under the Copyright Act, 1957.
- Whether OpenAI's use qualifies as "fair use" under Section 52 of the Copyright Act, 1957.

- Whether Indian courts have jurisdiction over a case involving foreign servers.

Given the case's complexity and the lack of established jurisprudence in India, the Hon'ble Court appointed two Amici Curiae—Advocate Adarsh Ramanujan and Dr. Arul George Scaria—to assist in examining these issues. This case marks the first of its kind in India, addressing the intersection of AI and copyright law.

## TRADEMARK CASES

**ZYDUS HEALTHCARE LIMITED & ORS. (Plaintiffs) Vs ALDER BIOCHEM PRIVATE LIMITED (Defendant)**

CASE NO. - CS(COMM) 516/2023, I.A. 14145/2023 & I.A. 3116/2024

DECIDED ON – November 13, 2024

The Plaintiffs filed the present suit against the defendant, alleging trademark infringement.


Plaintiffs allege that “” constitutes visual, phonetic, and

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structural similarity, leading to confusion with plaintiffs' mark“



”The Plaintiff claimed that the defendant's use of

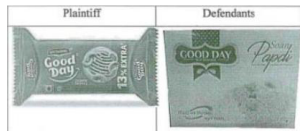
the mark is identical and deceptively similar to their registered trademark “**BIOCHEM**”. Plaintiffs argued that this similarity could mislead consumers and harm their goodwill, especially in the pharmaceutical sector, where precision is critical. Plaintiffs asserted ownership of the trademark “**BIOCHEM**,” coined in 1959, and continuously used since then with over 500 pharmaceutical products. The defendant argued that “**ALDER**” is the primary trademark and “**BIOCHEM**” merely indicates pharmaceutical focus. The defendant also claims “**BIOCHEM**” as a generic term widely used in the pharmaceutical industry, citing numerous companies using similar names. The Hon'ble Delhi High Court found that the Plaintiffs demonstrated a prima facie case of infringement. The Hon'ble Court noted that “**BIOCHEM**” is the dominant feature of the Plaintiff's trademark and is being used by the Defendant for similar goods (pharmaceutical products). The Hon'ble Court emphasized the risk of confusion in the pharmaceutical sector, where such errors could have life-threatening consequences. The Hon'ble Court issued an interim injunction in favor of plaintiffs, restraining defendants from using the trademark “” or any similar marks.

**AlderBiochem**



## BRITANNIA INDUSTRIES LTD (Plaintiff) vs DESI BITES SNACKS P LTD & ORS. (Defendants)

CASE NO. - CS(COMM) 983/2024 & I.A. Nos. 44302/2024, 44303/2024, 44304/2024 & 44305/2024  
DECIDED ON - November 07, 2024



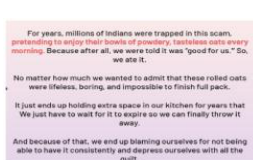
The plaintiff filed a suit against the defendants for infringement of its registered trademark "GOOD DAY."

The defendants were found to be selling products such as "Soan Papdi" and food items like "Papad" under the mark "GOOD DAY," which is identical to the plaintiff's well-known trademark. Plaintiff contended that its "GOOD DAY" mark, registered since 1986, has acquired immense goodwill in the food industry. The defendants' use of the identical mark constitutes trademark infringement, passing off, and unfair competition, causing harm to the brand's reputation and misleading consumers.

The Hon'ble Delhi High Court observed that the plaintiff established a *prima facie* case of trademark infringement. The identical nature of the mark and its use by the defendants without authorization indicated a deliberate attempt to ride on plaintiff's goodwill. The Hon'ble Court highlighted the potential for consumer confusion and irreparable damage to the plaintiff's reputation. The Hon'ble Court passed an *ex parte ad interim injunction* in favor of the plaintiff, restraining the defendants from manufacturing, selling, or marketing their products under the mark "GOOD DAY" or any deceptively similar trademark.

## MARICO LIMITED (Plaintiff) Vs ALPINO HEALTH FOODS PRIVATE LIMITED (Defendant)

CASE NO. - CS(OS) 872/2024, I.A. 43856/2024, I.A. 43857/2024, I.A. 43858/2024, I.A. 43859/2024 & I.A. 43860/2024  
DECIDED ON - October 29, 2024



Plaintiff filed a suit against Defendant to seek a permanent injunction restraining Defendant from publishing advertisements that allegedly disparaged oats as a food category. Plaintiff claimed that Defendant advertisements, which compared oats to non-edible

substances like lime powder ("choona"), cement, and adhesive, were defamatory, misleading, and damaging to the reputation of Plaintiff product. Plaintiff alleged that Defendant falsely conveyed that oats were unhealthy, inedible, and unsuitable for consumption, thereby eroding consumer trust and goodwill. Defendant argued that its advertisements were merely comparative and within the permissible bounds of commercial speech. The Hon'ble Delhi High Court noted that the advertisements were *prima facie* disparaging, with Defendant employing derogatory terms and comparisons (e.g., likening oats to lime powder and construction materials). The Hon'ble Court observed that the ads went beyond permissible puffery and targeted oats as a category, potentially causing irreparable harm to plaintiff. The Hon'ble Court emphasized that generic disparagement, even without naming a specific brand, was actionable. The Hon'ble Court passed an *ex-parte ad-interim injunction* in favor of plaintiff. Restraining Defendant, its agents, and representatives from publishing or sharing the impugned advertisements or any similar content disparaging oats as a food category.

## MANKIND PHARMA LIMITED (Plaintiff) vs AQUAKIND LABS LLP & ORS. (Defendants)

CASE NO. - CS(COMM) 958/2024 & I.A. Nos. 43437/2024, 43438/2024, 43439/2024, 43440/2024, 43441/2024, 43442/2024 & 43443/2024  
DECIDED ON - October 25, 2024

Plaintiffs Trademark	Defendants Trademark

Plaintiff filed a suit against Defendants seeking a permanent injunction to restrain the defendants from infringing its trademarks by using the trademark "AQUAKIND," which is deceptively similar to Plaintiff well-known trademark "MANKIND" and its "KIND" formative trademarks. Plaintiff Contended that the trademark "MANKIND" was adopted in 1986 and registered in 1995. The plaintiff has an extensive portfolio of over 300 trademarks with the suffix "KIND," all of which have garnered goodwill and reputation in the pharmaceutical industry. The defendants' use of "AQUAKIND" is dishonest and aimed at riding on the goodwill of the plaintiff's well-known trademarks, causing dilution and confusion. Defendants Contended their adoption of "AQUAKIND" was independent and justified by

documents submitted during the opposition proceedings. They argued there was no intention to infringe or mislead consumers. The Hon'ble Delhi High Court observed that the plaintiff's trademarks had acquired substantial goodwill and reputation over the years, making them well-known in the pharmaceutical industry. The defendants' use of "AQUAKIND" for similar goods was creating a high likelihood of confusion and deception among consumers. The Hon'ble Court granted an *ex parte ad interim injunction* restraining the defendants from using "AQUAKIND" or any name deceptively similar to the plaintiff's trademarks "MANKIND" and its "KIND" family of marks.

**SKECHERS SOUTH ASIA PVT. LTD. & ORS. (Plaintiffs)  
vs WARDRODE & ORS. (Defendants)**

CASE NO. - IA (L) NO. 33060 of 2024 in COMMERCIAL  
IPR SUIT (L) NO. 32860 of 2024  
DECIDED ON – October 24, 2024



Plaintiffs filed the present suit against multiple Defendants for manufacturing and selling counterfeit goods bearing Skechers' trademarks and artistic works. Plaintiffs alleged that the Defendants had "bodily lifted" Skechers' trademarks and artistic works using them dishonestly to market counterfeit goods. The Hon'ble Bombay High Court found a strong *prima facie* case in favor of the Plaintiffs. The Hon'ble Court observed that the Plaintiffs owned valid and subsisting trademarks and copyrights, which the Defendants had dishonestly imitated. The counterfeit goods were clear reproductions of Skechers' trademarks and artistic works, likely causing confusion among consumers. Granting ex-parte relief was necessary to prevent the Defendants from removing or distributing the counterfeit goods. The Hon'ble Court issued an *ex-parte ad-interim injunction* restraining the Defendants from using Skechers' trademarks and artistic works. A Court Receiver, along with Additional Special Receivers, was appointed to search the Defendants' premises, seize the counterfeit goods, and take an inventory.

**C. K. CHANDRAN (Petitioner) vs MANJU (Respondent)**

CASE NO. - OP (FC) NO. 591 OF 2024  
DECIDED ON - October 10, 2024

The petitioner filed the present suit over the use and ownership of two shop rooms in Changan cherry. The petitioner first filed the case in the Family Court, Kottayam, seeking a permanent injunction to prevent the respondent from entering the shop rooms. The respondent, in turn, filed a counterclaim, arguing that the shops operate

under the name "CALLUNA," which is her registered trademark. The Family Court passed an order, granting an injunction against the petitioner. The maintainability of the order was questioned in this original petition. Petitioner argued that the Family Court failed to consider whether the counterclaim and the injunction sought were valid under the Trademarks Act. Trademark suits are commercial disputes, which can be adjudicated only by commercial courts.

The Hon'ble Kerala High Court observed that the Family Court failed to address the maintainability of the counterclaim, particularly as it extended beyond the original petition to other shops not mentioned in the case. Also, the Family Court did not adequately consider whether the injunction against the petitioner under the Trademarks Act was valid. The High Court set aside the Family Court's order concerning the injunction granted under. The case has been remanded to the Family Court for reconsideration. The Family Court has been directed to reevaluate the maintainability and scope of the counterclaim. Also, consider all objections raised by the petitioner, including whether the injunction under the Trademarks Act is valid for shops not mentioned in the original petition. The Family Court must issue a fresh order within one month after providing an opportunity for both parties to present their arguments.

**GAMESKRAFT TECHNOLOGIES PRIVATE LIMITED  
& ANR. (Plaintiffs) vs JOHN DOE & ORS (Defendants)**

CASE NO. - CS(COMM) 855/2024 & I.A. Nos.  
41000-41002/2024  
DECIDED ON – October 01, 2024



The present suit has been filed seeking permanent injunction against the defendant for trademark and

copyright infringement. Plaintiffs asserted that their trademarks are the unique combination of words such as "Rummy" and "Culture" as distinctive. Plaintiffs alleged unauthorized use of these marks, replication of website content, and unfair competition, causing damage to their reputation. The Hon'ble Delhi High Court noted that the plaintiffs established a *prima facie* case for infringement and passing off. The court emphasized that the combination of "Rummy" and "Culture" is distinctive to the plaintiffs and any unauthorized use of the marks or replication of their

website content could mislead users and harm the plaintiffs' goodwill. It also found the balance of convenience in favor of the plaintiffs and observed that they would suffer irreparable harm if relief was not granted. Interim relief granted in favor of the plaintiffs.

## RADICO KHAITAN LTD (Plaintiff) vs M/S RAINA BEVERAGES & ORS (Defendants)

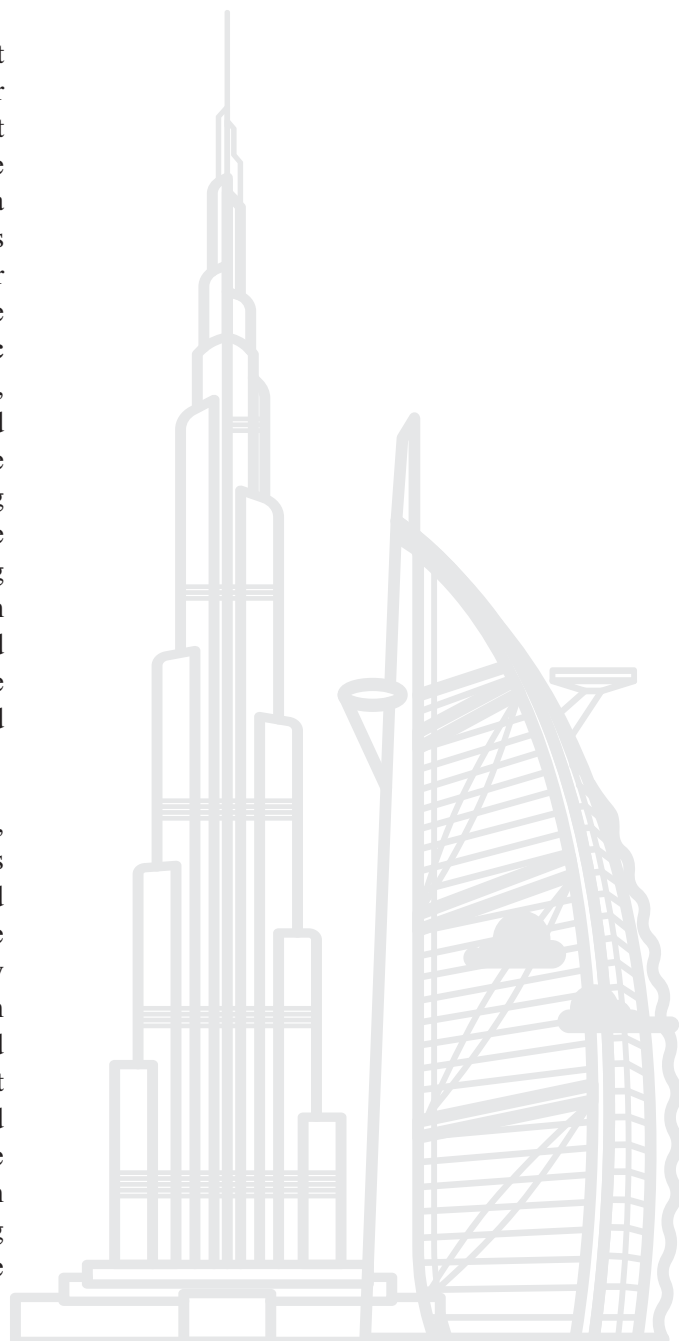
CASE NO.- CS(COMM) 508/2016 & I.A. Nos. 5866/2016, 9685-9686/2016

DECIDED ON – September 26, 2024



The plaintiff filed the present suit against Defendants for trademark and copyright infringement based on the defendants' use of a deceptively similar trade dress and packaging for their alcoholic beverages. Plaintiff asserted exclusive ownership of the registered trademark "**Magic Moments Remix**" and copyright over its trade dress, including distinctive elements like color schemes and dancing figures on the bottles. The plaintiff accused the defendants of copying its trade dress, misleading consumers, and riding on its goodwill and reputation. The defendants initially appeared but later defaulted in filing their written statements and ceased participating in proceedings. The Hon'ble Delhi High Court found overwhelming similarities between the trade dress of the plaintiff's products and the defendants' impugned products.

The Hon'ble Court noted identical elements in design, packaging, and branding, concluding that the defendants had intentionally infringed the plaintiff's trademark and copyright. The Hon'ble Court emphasized that the defendants' conduct was willfully dishonest, particularly since they continued infringing despite prior injunctions in related cases. Given the defendants' non-participation and obvious infringement, The Hon'ble Court determined that the plaintiff had established a clear case of trademark and copyright infringement as well as passing off. The Hon'ble Court granted a decree of permanent injunction in favor of plaintiff, restraining the defendants from using any trade dress, device, or artistic work similar to the "Magic Moments Remix" trademark.







309 Churchill Tower Business Bay, P.O. Box 415116 Dubai-United Arab Emirates  
+971 4 582 6655  
global@audirivox.com



[www.audirivox.com](http://www.audirivox.com)

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